

## **REMARKS:**

All previously pending claims (1-8, 10, 12, 14, 17-32, 40-44, 47-50, 52, 54, and 55) remain pending in the application. Claim 23 has been amended to correct a typographical error.

### **Clarification Regarding Knapp Reference**

The Examiner has cited “Knapp (U.S. Patent 5,372,840)” on page 3 of the Office Action. However, the ‘840 patent belongs to Kleyer et al. (and none of Kleyer’s co-inventors are named Knapp). Clarification is respectfully requested.

### **Allowable Subject Matter**

Applicant appreciates the Examiner’s indication of allowable subject matter in independent claims 1 and dependent claims 24-25 (which stand objected to as being dependent on rejected base claim 23). *See* Office Action at 22-23.

### **Examiner Interview**

The undersigned thanks the Examiner for the courtesy of interviewing this case via telephone on June 4, 2010. During the interview, Applicant’s representative discussed the unavailability of the cited Schurig reference as prior art under § 103(c). *See* below. The Examiner agreed to withdraw the rejections if Applicant pointed out Schurig’s deficiencies in a written response. Applicant has done so herein.

### **Claim Objections**

Claims 23-31, 48, and 49 stand objected to because of a typographical error in claim 23. *See* Office Action at 2. Applicant has amended claim 23 accordingly, and respectfully requests withdrawal of the objections to the claims.

### **Section 103 Rejections**

All independent claims that are currently rejected (claims 17, 23, 32, 50, and 52) stand rejected under 35 U.S.C. § 103(a) over various proposed combinations of art that all include Schurig (U.S. Pub No. 2002/0037054; corresponding to U.S. App. No. 09/753,747, now U.S. Pat. No. 7,072,407). *See* Office Action at 3-22. Applicant respectfully traverses these rejections.

Applicant respectfully submits that the cited Schurig '054 publication is unavailable as prior art under 35 U.S.C. § 103(c), which has two requirements for a reference to be disqualified:

- (i) The reference “qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102”; and
- (ii) “[T]he subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

35 U.S.C. 103(c)(1). In this case, both requirements (i) and (ii) are met.

First, the Schurig '054 publication only appears to qualify under 35 U.S.C. § 102(e). For example, the Schurig '747 application was filed on December 27, 2000, while the present '467 application was filed less than one year later on November 20, 2001 (and thus § 102(b) is not applicable). Second, both the Schurig '747 application and the present '467 application were, at the time claimed invention was made, owned by or subject to an obligation of assignment to the same entity. *See, e.g.*, Assignment dated July 27, 2001 in the '747 application, and Assignment filed November 20, 2001 in the present '467 application (showing SwitchPoint Networks, Inc. as assignee in both cases).

Applicant therefore submits that the cited Schurig publication is unavailable as a reference under 35 U.S.C. § 103(c), and that the Examiner's rejections relying on this publication accordingly fail to make a *prima facie* case of obviousness under 35 U.S.C. § 103(a). *See* MPEP § 706.02(I)(3) and § 2143. Applicant thus respectfully requests withdrawal of all § 103 rejections of the independent claims (including claims 17, 23, 32, 50, and 52) and of their respective dependent claims.

**CONCLUSION:**

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above-referenced application from becoming abandoned, Applicant hereby petitions for such extension.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment, to Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C. Deposit Account No. 501505/5957-03700/AAC.

Respectfully submitted,

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